In The

Supreme Court of the United States

October Term, 1953

No. 592

Henry R. Witte, *Petitioner*,

v.

The State of New Jersey.

Petition for Rehearing on a Petition for a Writ of Certiorari to the Supreme Court of New Jersey

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To the Honorable, the Chief Justice of the United States, and Associate Justices of the Supreme Court of the United States:

Comes now the petitioner and presents this petition for a rehearing on the petition for a writ of certiorari filed in this case.

JURISDICTION

The petition for a writ of certiorari was filed on and denied on April 26, 1954. This petition for rehearing is filed within fifteen days from April 26, 1954, in accordance with Rule 33 of this Court.

REASONS FOR PETITION FOR REHEARING

In applying for this rehearing, your petitioner reiterates each and every ground set forth in the original petition, and further suggests to the Court the following:

I. A circumstance of substantial effect has intervened since the filing of the original petition:

Petitioner, who had been Chief of Police of Lodi, Bergen County, New Jersey, was convicted for non-feasance in office. A large number of witnesses was presented at the trial of petitioner, which resulted in his conviction.

After the filing of the petition herein, one Walter G. Winne, who had been the prosecutor in Bergen County at the time of the alleged commission of the alleged offenses by petitioner, was put to trial on an indictment charging misconduct on his part as prosecutor at about the same time and similar to that charged to the petitioner. Substantially the same evidence was adduced in support of the indictment against the said prosecutor as against the petitioner. And whereas the Court refused to grant motions for acquittal in favor of petitioner, the same Court, through another judge, granted such motions on behalf of the said prosecutor.

Petitioner has complained about the unfairness of his trial, as argued in his original petition herein; and while he realizes that the above statement is not a full presentation of the facts pertaining to the trial of the said prosecutor, it demonstrates to petitioner again that he was not treated fairly; and he respectfully prays that the Court grant this petition for rehearing and that he be given an opportunity to demonstrate in more detail the inequality of treatment accorded him by the trial court.

II. There was another ground previously available to petitioner, although not presented:

Petitioner had argued that his rights under the 14th Amendment were violated, in that he was not accorded a fair and impartial trial within the contemplation of the due process clause of that Amendment. As petitioner interprets the brief filed in opposition to his petition for certiorari, it is argued that what petitioner complained of were *procedural* irregularities and that such irregularities are not encompassed by the 14th Amendment.

It is respectfully submitted that this Court has answered such an assertion in the case of *Whitney* v. *California*, 274 U. S. 357, 373, 71 L. Ed. 1095, 1105, wherein Justice Brandeis in his concurring opinion stated:

> "Despite arguments to the contrary which had seemed to me persuasive, it is settled that the due process clause of the 14th Amendment applies to matters of substantive law as well as to matters of procedure."

CONCLUSION

For the reasons already argued in his original petition, and for the further reasons contained herein, it is respectfully urged that a rehearing be granted; that upon further consideration the order of April 26, 1954, denying the petition for certiorari be revoked; and that the writ of certiorari issue.

JOSEPH SITNICK,
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CERTIFICATE

I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay, and that the same is restricted to the grounds above specified; namely, that a circumstance of substantial effect has intervened since the filing of the petition for Writ of Certiorari, and that there was another substantial ground available to petitioner, although not previously presented.

JOSEPH SITNICK,
Counsel for Petitioner.